

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS: Temsamani *et al.*
SERIAL NO: 09/856,940 INT'L APPLN NO : PCT/FR99/02939
I.A. FILING DATE: 26 November 1999 PRIORITY DATE : 30 November 1998
FOR: PHARMACEUTICAL COMPOSITION COMPRISING AN ANTI-CANCER AGENT AND AT
LEAST A PEPTIDE

August 8, 2002
Boston, Massachusetts

Box PCT
Commissioner for Patents
Washington, D.C. 20231

Attention: Office of PCT Legal Administration

**DECLARATION AND STATEMENT OF FACTS IN SUPPORT OF
RENEWED PETITION UNDER 37 C.F.R. § 1.47(a) (FILING ON BEHALF
OF INVENTOR WHO REFUSES TO SIGN)**

Sir:

This is a Declaration and Statement of Facts which accompanies the Third Renewed Petition pursuant to 37 C.F.R. § 1.47(a) to accept the Combined Declaration and Power of Attorney of inventors Jamal Temsamani and Michel Kaczorek.

The DECISION of June 11, 2002 states that it was unclear whether Applicants were arguing that Ms. Colin de Verdière could not be located or that she refused to execute the declaration after being supplied a complete copy of the application papers.

I am thus submitting this renewed statement and declaration to accompany the renewed petition under 37 CFR 1.47(a) being filed herewith. I am an attorney for SYNT:EM S.A., the assignee of the above-identified application. I have first-hand knowledge of the facts recited herein.

The above-identified application has an International Filing Date of November 26, 1999 and was filed as a U.S. National Application under 35 U.S.C. § 371 on May 30, 2001. The application is to be assigned to SYNT:EM, Nimes, France and names three (3) inventors: Jamal Temsamani, Michel Kaczorek and Annick Colin de Verdière. Inventors Jamal Temsamani and Michel Kaczorek are presently employees of SYNT:EM. Inventor Annick Colin de Verdière is no longer employed at SYNT:EM. Upon receipt of the NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C.371 IN THE UNITED STATES DESIGNATED ELECTED OFFICE (DO/EU/US), a Combined Declaration and Power of Attorney form in

conformance with U.S. Patent and Trademark Office regulations was prepared for submission to the inventors for signing.

Inventor Annick Colin de Verdière is no longer employed at SYNT:EM. Previously copies of the application papers and Declaration have been sent to her last known residence address by officers of SYNT:EM (namely Alain Yvorra) on several occasions requesting that she sign and return the Declaration. See Applicant's previous Petitions filed December 6, 2001, February 22, 2002, and May 28, 2002. No response has ever been received.

On June 28, 2002, I personally sent a complete copy (via DHL courier) of the application papers, including the filing papers and a copy of the patent application, and a Declaration form to Annick Colin de Verdière for her review and signing of the Declaration form. A copy of my letter (in French) and an English translation accompanies this statement, as well as a copy of the proof of postage receipt, evidencing shipping by courier service.

The last known residence address of non-signing inventor, Annick Colin de Verdière to which my letter and a complete copy of the application and the Declaration form was sent is:

4 rue Rémi Belleau
86 000 POITIERS
FRANCE

Also enclosed herewith is a copy of the proof of delivery from the DHL Worldwide Express courier service. This document was signed by Annick Colin de Verdière, evidencing her receipt of the June 28, 2002 package.

Accordingly, a diligent and *bona fide* effort to reach inventor Annick Colin de Verdière and to comply with 37 C.F.R. §1.47(a) has been made. The undersigned notes that this is now four (4) times that Annick Colin de Verdière has been sent a complete copy of the application papers, including the filing papers and the patent application, and a Declaration form. Each time, inventor Annick Colin de Verdière has refused to sign and return the Declaration.

This statement is made as to the exact facts that are relied upon to establish the diligent and *bona fide* effort made to secure the execution of the declaration by the nonsigning inventor for the above-identified patent application.

Since inventor Annick Colin de Verdière has apparently received the complete copy of the application and declaration, but has not returned the executed declaration, the undersigned respectfully requests that inventor Annick Colin de Verdière be designated as an inventor who refuses to sign 37 C.F.R. §1.47(a), and to permit submission of the Declaration with the signatures of Jamal Temsamani and Michel Kaczorek on behalf of the non-signing inventor.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are

Applicants: Tamsamani *et al.*
U.S.S.N. 09/856,940

punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001 and that willful false statements may jeopardize the validity of this application and any patent issuing therefrom.

Respectfully submitted,



Michel Morency, Ph.D., Esq., Reg. No. 50,183
Attorney for the Applicants
c/o Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111
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Fax: (617) 542-2241

Dated: August 8, 2002

TRA 1683415v1

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

One Financial Center
Boston, Massachusetts 02111

Michel Morency, Ph.D.
Attorney

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Direct dial 617 348 1646
mmorency@mintz.com

June 28, 2002

Via DHL

Madame Annick COLIN DE VERDIÈRE
4 rue Rémi Belleau
86000 POITIERS
France

Objet: Demande de brevet américain N° 09/856,940 correspondant à la demande PCT/FR99/02939 du 26 novembre 1999 (Date de dépôt international) concernant: **"Pharmaceutical composition comprising an anti-cancer agent and at least a peptide"**

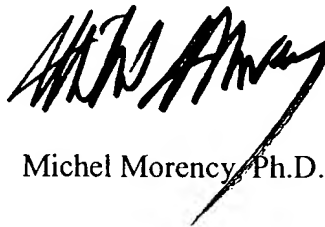
Madame,

Nous vous prions de bien vouloir trouver ci-joint:

1. un exemplaire complet de la demande de brevet américain N° 09/856,940 correspondant à la demande PCT/FR99/02939 du 26 novembre 1999 (Date de dépôt international) concernant: **"Pharmaceutical composition comprising an anti-cancer agent and at least a peptide"**
2. un formulaire "Combined Declaration and Power of Attorney".

Nous vous saurions gré de bien vouloir signer et dater le formulaire "Combined Declaration and Power of Attorney" et nous le retourner le plus rapidement possible afin que nous puissions soumettre votre déclaration signée à l'Office américain des Brevets.

Nous vous remercions par avance de votre diligence en cette matière importante et vous prions d'agréer, Madame, l'assurance de notre considération distinguée.



Michel Morency, Ph.D.

Encls.

TRA 1684850v1

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

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Michel Morency, Ph.D.
Attorney

Direct dial 617 348 1646
mmorency@mintz.com

617 542 6000
617 542 2241 fax

June 28, 2002

Via DHL

Madame Annick COLIN DE VERDIÈRE
4 rue Rémi Belleau
86000 POITIERS
France

Re: United States Patent Application Serial No. 09/856,940 corresponding to
PCT/FR99/02939 dated 26 novembre 1999 (international filing date) concerning:
**"Pharmaceutical composition comprising an anti-cancer agent and at least a
peptide"**

Madame,

Please find enclosed herewith:

1. a complete copy of United States Patent Application Serial No. 09/856,940
corresponding to PCT/FR99/02939 dated 26 novembre 1999 (international filing
date) concerning: "Pharmaceutical composition comprising an anti-cancer agent
and at least a peptide"
2. a "Combined Declaration and Power of Attorney" form.

We would be grateful if you would please sign and date the document "Combined
Declaration and Power of Attorney" and return it to us as soon as possible so that we can file
your executed Declaration the United States Patent Office.

We thank you in advance for your diligence in this important matter and we ask you to
accept, Madame, the assurance of our distinguished consideration.

Michel Morency, Ph.D.

Encls.

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2 To (Recipient)
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 Madame Annick Colin De Verdier
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Ivor R. Elrifi
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One Financial Center
Boston, MA 02111

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JUN 17 2002

MINTZ LEVIN, BOSTON
PATENT DOCKET DEPT.

In re Application of
TEMSAMANI, Jamal, et al.
Application No.: 09/856,940
PCT No.: PCT/FR99/02939
Int. Filing Date: 26 November 1999
Priority Date: 30 November 1998
Attorney Docket No.: 19904-013NATL
For: PHARMACEUTICAL
COMPOSITION COMPRISING AN
ANTI-CANCER AGENT AND AT
LEAST A PEPTIDE

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DECISION ON

PETITION UNDER

37 CFR 1.47(a)

This is a decision on applicants' "Renewed Petition Under 37 CFR 1.47(a)," filed in the United States Patent and Trademark Office (USPTO) on 22 February 2002.

BACKGROUND

On 26 November 1999, applicants filed international application PCT/FR99/02939, which claimed a priority date of 30 November 1998. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 08 June 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 30 June 2000, within nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 30 May 2001.

On 30 May 2001, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 10 July 2001, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) was required. The NOTIFICATION set a two-month extendable period for reply.

On 06 December 2001, applicants submitted the petition under 37 CFR 1.47, which was accompanied by, *inter alia*, a petition for a three-month extension of time; the fee for a three-month extension of time; and a combined declaration and power of attorney executed by inventors Jamal Temsamani and Michel Kaczorek.

On 30 January 2002, the Office mailed Decision on Petition Under 37 CFR 1.47(a) dismissing the petition without prejudice.

On 22 February 2002, applicants filed "Renewed Petition Under 37 CFR 1.47(a)," accompanied by, *inter alia*, a statement of facts and copies of postal receipts and letters with translations.

On 28 March 2002, the Office mailed Decision on Petition Under 37 CFR 1.47(a) dismissing the petition without prejudice.

On 28 May 2002, applicants filed "Second Renewed Petition Under 37 CFR 1.47(a)," accompanied by, *inter alia*, a statement of facts, a copy of a postal receipt, printouts of internet searches and a letter to Annick Colin de Verdiere with translation.

DISCUSSION

A petition under 37 CFR 1.47 must be accompanied by: (1) the fee under 37 CFR 1.17(h), (2) proof of pertinent facts, namely that the inventor refuses to sign or cannot be reached after diligent effort, (3) a statement of the last known address of the inventor, and (4) an oath or declaration by the 37 CFR 1.47(a) applicant on behalf of himself or herself and the nonsigning applicant.

Applicants previously satisfied items (1), (3) and (4).

It is unclear whether applicants are arguing that Ms. Colin de Verdiere could not be located after a diligent effort or that she has refused to execute the declaration after being supplied a complete copy of the application papers.

Under 37 CFR 1.47(a), the petition must supply proof of pertinent facts. The second renewed petition argues that inventor Colin de Verdiere could not be located, however, applicants do not indicate that the letter sent to her last known address was returned as undeliverable. Applicants have supplied neither the signature portion of the postal receipt nor a translation of the postal receipt. Additionally, in the 22 February 2002 petition, applicants argued that Ms. Colin de Verdiere had refused to sign the declaration. Applicants stated that the signature on the postal receipt was that of Annick Colin de Verdiere.

CONCLUSION

For the above reasons, applicants' petition under 37 CFR 1.47(a) is DISMISSED, without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Failure to timely file the proper response will result in abandonment of this application. Any reconsideration request should

include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of this letter marked to the attention of the Office of PCT Legal Administration.



Leonard E. Smith
PCT Legal Examiner
PCT Legal Administration



Erin M. Pender
Attorney Advisor
PCT Legal Administration

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Facsimile: (703) 308-6459